

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MADISON SQUARE GARDEN, L.P.,	)	No. 07 Civ. 8455 (LAP)
	)	
Plaintiff,	)	
	)	
-against-	)	
	)	
NATIONAL HOCKEY LEAGUE,	)	
NATIONAL HOCKEY LEAGUE	)	
ENTERPRISES, L.P., NATIONAL	)	
HOCKEY LEAGUE INTERACTIVE	)	
CYBERENTERPRISES, L.L.C., NHL	)	
ENTERPRISES CANADA, L.P., and NHL	)	
ENTERPRISES, B.V.,	)	
	)	
Defendant.	)	
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**DECLARATION OF JOHN DEIGHTON**

JOHN DEIGHTON declares under penalty of perjury pursuant to 28USC Section 1746 as follows:

1. I am the Harold M. Brierley Professor of Business Administration at the Harvard Business School. I have taught graduate level marketing courses for more than 25 years, and over that time I have published more than 40 peer-reviewed papers and book chapters on a variety of marketing topics and over 25 case studies of marketing practice. I am the editor of the Journal of Consumer Research. I am a Trustee of the Marketing Science Institute. My Curriculum Vitae, and a list of my prior testimony, is attached as Exhibit 1.
2. My area of research and teaching is marketing and marketing communications, with a particular focus on direct and interactive marketing. I was the founding co-editor of the Journal of Interactive Marketing which publishes scholarly research on digital interactive marketing. I am on the Board of the Direct Marketing Education Foundation, whose mission is the cultivation of direct and interactive marketing talent. For five years I ran its most senior program which brought together leading practitioners of interactive marketing and MBA students.
3. I have been asked by counsel for Madison Square Garden L.P. to address two questions. What is the role of a website in the management of relationships between a brand and its customers or fans? What are the implications of NHL's attempts to limit MSG's freedom to control the New York Rangers website?
4. In summary my conclusions are as follows. (A) Building, maintaining and improving relationships between brands and customers is a normal and vital part of responsible management. (B) Websites are by far the most important of all the tools for managing

these relationships. (C) To use a website well to build a relationship it is necessary that the website communicate the differentiated, authentic, and unmediated voice of the brand and let consumers feel the brand has heard their voices directly. (D) The actions of the NHL threaten to cripple the relationship-building efforts of the New York Rangers brand.

5. The materials I have reviewed are listed in Exhibit 2.

### **The Role of Relationship Marketing in Building and Maintaining a Fan Base**

6. Surveys by the NHL cited in the Fisher and Collins declarations suggest that hockey fans are capable of intense enthusiasm for the teams they support. But this enthusiasm can not be taken for granted. It needs to be earned. Cultivating the enthusiasm and support of fans, and customers generally is a widely pursued goal in the field of marketing. Within the marketing profession it goes under the name of “relationship management” or “relationship marketing.” It is accepted as a normal and vital part of management’s responsibility to the stakeholders in an enterprise.
7. Relationship marketing can be defined as a collective term for all of those activities that build, maintain and improve relationships with current customers. It forms part of the strategy of all businesses that depend to some degree on repeat transactions. Thus brands like Coca Cola monitor brand loyalty as a measure of relationship strength, and hotels, airlines and supermarkets employ “loyalty programs” to this end. It is particularly crucial in businesses where customers are capable of high levels of passion. Students of relationship marketing often cite Harley Davidson as an example of best practice in this strategy, noting that the Harley brand is one of the few that consumers tattoo on their bodies. (The New York Rangers is, by the way, another – see <http://newyorkrangers.com/fanzone/FANatics/photos.asp>.)

8. Other examples of relationship marketing at the intense end of the emotional spectrum are to be found in the practices of Saab and Porsche automobiles, Winnebago mobile homes, the fan clubs of artists like Britney Spears and the Rolling Stones, and a number of television programs that have the potential for spirited pre-and post-viewing discussion among audiences, such as *The Sopranos* and *General Hospital*. The relationships formed around brands extend even to defunct brands such as the failed Apple Newton.
9. There is a literature in marketing on the sociology of these relationships centered on marketed products and services, often called “brand communities,” which studies their structure and dynamics. Muniz and O’Guinn (2001) identify three commonalities in brand communities –consciousness of kind, shared rituals and tradition, and a felt sense of duty or obligation to the brand community. In this respect groups of intensely loyal customers are not unlike what anthropologists call tribes.

#### **Websites as Tools for Relationship Management**

10. The collective term for the marketing vehicles that are used to pursue the goal of relationship marketing is interactive media. The essential property of interactive media, as distinct from broadcast media such as print and television advertising, is that interactive media permit conversation between consumers and the brand, and among consumers. Examples of such media from the pre-digital era included direct mail, telemarketing, and custom-published supporter magazines. Since the birth of the Web in the mid-1990s, however, relationship marketing has become cheaper and more powerful, and vastly more important, using media like websites, email, text messaging on cellphones, social media like MySpace, and blogs. Thus fan sites are maintained at, for

example, britneyspears.com, saab.com, and the-sopranos.com, and many celebrities are represented, either by themselves or by fans, at pages on MySpace.

11. Of all the tools for relationship management, by far the most powerful is the website.

Metaphorically it is the face of the brand to its consumers, the door by which customers enter the franchise, and one of the auditoriums (the other being, in the case of hockey, the arena) in which they enact their personal identification with the team, bond with each other and display the fervor of their commitment.

12. There are two vital dimensions of good relationship marketing between a brand and its followers. One is the ability of the followers to feel they are engaging in rich, open and unmediated communication with the brand. Followers need to feel they are heard by the brand and are hearing its authentic voice. A second, and always a marker of intensity in the relationship, is an interest in and ability to reach other fans. Fans are chauvinistic. They show either no interest in or outright hostility to fans of other brands in a market. Indeed sometimes dividing lines emerge within fan clubs, as for example when feuds developed between Porsche owners along the lines of air-cooled and water-cooled models, and most recently between Porsche's sports car owners and its sports utility vehicle owners. Paradoxically these internecine quarrels are often associated with a strengthening of the brand.

13. Performing on these two dimensions of relationship marketing requires skilled use of a whole spectrum of new and rapidly changing technologies. Ten years ago a static website, now disparaged as "brochureware," was the state of the art. Polls and surveys were an early interactive element. Then came dynamic elements, such as the ability to place and customize orders for merchandise. Still later came the ability to upload from

and download to the visitor's computer photographs, and now video uploading is the mark of a good website. The pace of innovation in tools for interactive marketing has been rapid and is likely to intensify in the next decade as bandwidth increases, new technologies are developed, and technology costs decline.

14. Speed of response to these interactive technology innovations is vital to successful relationship management. New media must be rapidly deployed, not for example after elaborate committee approval processes or at the pace of the slowest member of an industry, if a brand is to command the respect and admiration of its fans and indeed if the whole industry is to cultivate the highest levels of fan enthusiasm that a particular technology frontier allows. Relationship marketing needs to be nimble. Staples, a large retailer of office supplies, uses the term "60 minute marketing" to underscore that its tactics for customer relationship management evolve not on the annual cycles of an earlier age but every hour.

#### **Implications for the Rangers in their Dispute with the NHL**

15. The attempt by the NHL to move the Rangers website onto the NHL server and a concomitant interference with creative control would take away the Rangers' ability to talk to its "tribe" of loyal customers. This action would cripple the Rangers' ability to build a relationship with its fans and would cost the brand dearly because it would deny the Rangers access to the most powerful tool in the relationship marketing armory.
16. Without direct control over the tone of the conversation needed to convey to fans that they are talking with the real Rangers management, the Rangers will lose some important part of their claim on their fans' passions. The sense that Rangers fans have of being in

touch with like-minded team leadership will undermine the “consciousness of kind” alluded to above.

17. A computer-mediated conversation with a Rangers fan, if it is to feel authentic, must work with different elements than a conversation with fans of other teams. For example, fans of the Rangers make subtle distinctions among the heroes of the team’s past. It is not enough to drop the names of past legends of the Rangers. As another example, a team with history such as the Rangers builds a relationship with a quite different character than a team with the advantages of youth. It is important that both sides of the conversation know and make use of the particular rituals and conventions that mark one fan base as different than another. Fans are defined as much by what they are not as by what they are.
18. Competition drives innovation. As teams learn to use the variety of interactive marketing technologies available to them it is reasonable to expect that there will be more and faster learning in a climate of open competition among teams than in a climate of central management of website design. Consequently the commitment of fans to their teams will be greater under open competition, the spiritedness of inter-team competition will be higher, and the enthusiasm of each fan for the league will be greater.
19. Conversely, homogenized relationship management techniques will take away from each team an important and valuable voice with which to intensify the passion of fans. A single NHL brand persona and voice projected to the fan bases of each team will depress fan allegiance and turn a league of fiercely proud fan tribes into a drab conformist nation.
20. If the impulse to compete to deploy interactive marketing techniques is eliminated, it is likely that websites in the League will descend to a lowest common denominator of

sophistication instead of rising under the pressure of innovation and emulation to achieve optimal differentiation.

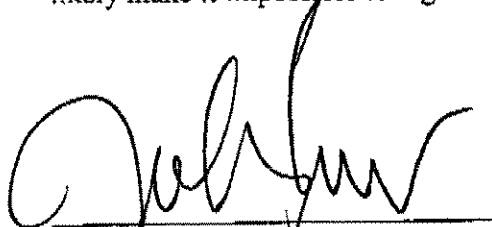
21. Professor Fisher in his affidavit describes a website as a distribution mechanism for disseminating intellectual property. This is an unreasonably narrow view of what a website is and what it can do for a team. A website has many functions, best summarized in the concept of a total marketing environment. It can distribute, but more important it is a medium of communication, from the team to its fans, from fans to the team, and among team members. It is part of the fan's consumption experience. It is a "place," second only to the team's rink, where fans go to relive memories, to express themselves, to identify with other fans, and to feel in touch with team members. The psychological benefits of a sensitively-managed website to a fan create value for a club that cannot be reduced to the ability to distribute intellectual or other property.
22. A relationship with fans is built by the cumulative building of trust and intimacy. It follows a trajectory which, if interrupted, is difficult if not impossible to reestablish. Interruption that cuts at the foundation for trust, that jars the foundation for intimacy, or that discredits the authenticity of a team's commitment to its fans, produces loss of relational momentum that is likely irreparable.

### **Conclusion**

23. A website is the most powerful instrument of relationship marketing available to an enterprise. It does what television, radio and fan magazines did for an earlier generation of fans, but it does so interactively and inexpensively. It allows a team to have direct conversations with individual fans around the city and around the globe. The action of the NHL denies this tool to the New York Rangers. It denies the Rangers a direct,



authentic, undistorted and unfiltered voice to interact with its fans. The action would damage the bond that exists between the team and its supporters in a manner that would likely make it impossible to regain the trust.



JOHN DEIGHTON

Dated Boston, MA. October 17 2007